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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

LAURA LYON,

Plaintiff and Appellant,

v.

SAN DIEGO COUNTY EMPLOYEES
RETIREMENT ASSOCIATION,

Defendant and Respondent.

D041516

(Super. Ct. No. GIC782937)

APPEAL from a judgment of the Superior Court of San Diego County, John S. Meyer, Judge. Affirmed.

Plaintiff and appellant Laura Lyon applied to defendant and respondent San Diego County Employees Retirement Association (the association) for service-connected disability retirement benefits under Government Code section 31270. The association's Board of Retirement (the board) denied her application on the grounds that she had not undergone all the medical treatment recommended by physicians and that, in any event, if she took certain measures, which the county was willing to accommodate, she would be

able to fully perform the tasks required by her position as a booking clerk at the county's jail.

Upon independent review of the record, the trial court found that the board's determination was supported by the weight of the evidence and denied Lyon's petition for a writ of administrative mandate. We affirm.

FACTS

Lyon was hired as a booking clerk for the San Diego County Sheriff's Department (the department) in September 1996. In March or April 1997 Lyon developed symptoms consistent with a subsequent diagnosis of carpal tunnel syndrome and d'Quervains tenosynovitis in her right wrist. In order to relieve these conditions, in January 1998 Dr. Peterson performed surgery on Lyon.

Lyon returned to work in February 1998 and assumed a light duty position operating the security gate at a jail facility. Lyon was removed from duty on April 2, 1998, after complaining of left arm and shoulder pains. A second physician, Dr. Dunlap, treated Lyon's shoulder with physical therapy and medication but recommended surgery on the shoulder when the pain persisted. Lyon declined to have shoulder surgery.

After working less than full time from May until September 1998, Lyon was again removed from duty after complaining of more pain. Dr. Peterson issued a permanent and stationary report finding that Lyon suffered a 50 percent loss of pre-injury capacity to grasp. He recommended a five-to ten-minute stretching break during every hour of repetitive activity using her upper right extremity. Based on a letter from the department

indicating it did not have permanent light duty assignments, Lyon filed for service-connected disability retirement on June 15, 1999.

As required under the by-laws and regulations of the board, a hearing officer conducted a hearing on Lyon's application on May 1, 2001. Lyon testified she could not perform the duties of a booking clerk. Lyon also admitted that she had not pursued all treatment options for her shoulder.

The hearing officer recommended that the board grant Lyon's application. However, the board voted to deny her application.

Lyon filed a petition for administrative mandate under Code of Civil Procedure section 1094.5. Initially, the trial court remanded the matter to the board with instructions that it prepare findings. On remand the board prepared findings consistent with its decision denying Lyon's application. Thereafter, the trial court denied Lyon's petition. Lyon filed a timely notice of appeal.

DISCUSSION

Lyon contends the record does not support the court's finding. She also asserts the court erred by not considering the entire record.

I

Sufficiency of Evidence

When reviewing the sufficiency of evidence on appeal, we review the record of the administrative mandamus proceeding to determine whether the trial court's findings are supported by substantial evidence. (*Yakov v. Board of Medical Examiners* (1968) 68 Cal.2d 67, 72-75.) We view the evidence in the light most favorable to the judgment and

resolve any conflict of evidence in favor of the trial court's findings. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206; *Yakov v. Board of Medical Examiners, supra*, 68 Cal.2d at p. 72.) Thus, if the judgment is supported by substantial evidence, we must accord due deference to the fact finder and not substitute our own evaluation.

Our review of the trial court's ruling is in contrast to the trial court's review of the board's determination. The trial court was required to determine whether the weight of the evidence supported the board's decision. (*Reynolds v. City of San Carlos* (1981) 126 Cal.App.3d 208, 217.)

Here, Lyon argued that two medical conditions prevented her from performing her duties as a booking clerk: left shoulder impingement syndrome (bursitis) and right upper extremity related work restrictions. However, as the association points out, the evidence showed Lyon was not permanently disabled and therefore she was not entitled to benefits.

A. Left Shoulder Condition

A public employee seeking permanent disability benefits must prove her incapacity permanently prevents her from performing her customary duties. (*Reynolds v. City of San Carlos, supra*, 126 Cal.App.3d at p. 216.) An incapacity is not considered permanent if the applicant has unreasonably refused treatment which would restore the applicant to a normal condition. (*Ibid.*) An applicant's duty to obtain reasonable medical treatment is based on "the common law rule requiring mitigation of damages [citation], which is properly applied in determining eligibility for disability retirement." (*Ibid.*) Thus a public retirement board has the inherent power "to determine whether a claimant

has undergone the medical treatment that reasonably could be expected to effect a cure."
(*Ibid.*)

Here, there is substantial evidence Lyon refused treatment which had a reasonable probability of restoring normal function to her left shoulder. Reports from Lyon's physicians show additional cortisone and subacromial decompression were both offered to Lyon as treatment options for her shoulder. The physicians' reports also show the physicians believed that with proper treatment her shoulder condition would not prevent her from fulfilling her duties as a booking clerk. Both the medical reports and Lyon's own testimony show Lyon declined these treatments.

Given this evidence, the board could properly find that Lyon's left shoulder injury did not permanently disable her because Lyon had refused medical treatment which was likely to restore normal use of her left shoulder. (*Reynolds v. City of San Carlos, supra*, 126 Cal.App.3d at p. 216.)

B. *Right Upper Extremity*

It is axiomatic that in order to receive a disability retirement an applicant must show that she is substantially unable to perform the duties of her position. (*Mansperger v. Public Employees's Retirement System* (1970) 6 Cal.App.3d 873, 876.) Moreover, the applicant must also show that the reasonable prognosis is that she will not be able to perform those duties for the rest of her life. (*Sweeney v. Industrial Acc. Com.* (1951) 107 Cal.App.2d 155, 159.)

Lyon's medical records show that Lyon's carpal tunnel syndrome was successfully treated by surgery in 1998. It is true that following surgery, Dr. Peterson stated: "The

patient is prophylactically precluded from forceful grasping activities with the right upper extremity, which contemplates a loss of approximately 50% of her pre-injury capacity for grasping. Additionally, she should be provided a five to ten minute stretching break for the right upper extremity per hour of required repetitive activity (typing, keying, button pushing, and so forth.)" The record also shows that another doctor stated that five-minute breaks would be sufficient. However, a representative of the sheriff's department testified before the board that Lyon could be given five-minute breaks each hour. On this record the board found that the sheriff's department "was able to accommodate the prophylactic restrictions by the physicians' testimony and reports entered into the record." The trial court found that this finding was supported by the weight of the evidence.

Contrary to Lyon's contention, whether the five-minute breaks are described as prophylactic measures or restrictions is of no material consequence. The record shows in a fairly unequivocal manner that, in light of the sheriff's department's willingness to accommodate her, Lyon's carpal tunnel syndrome did not prevent her from performing her duties as a booking clerk. Hence her right arm injury did not entitle her to a disability retirement.

II

Failure to Consider Entire Record

Lyon also contends the trial court failed to examine the administrative record in making its judgment. Lyon misreads the record.

At the time Lyon's petition was first heard by the trial court, the board had not made any factual findings and the trial court indicated to the parties that it would remand

the matter to the board so that the board could make findings. At that point Lyon's counsel asked the court to simply review the record itself and determine whether Lyon was disabled. The trial court rejected this suggestion and stated: "You mean to read the entire administrative record and essentially do the work of the board?" The trial court then ordered the matter remanded to the board.

Later, after the board had made its findings, the trial court issued a tentative decision denying Lyon's petition. In reaching the merits, the court stated: "I am limited to the record but I think based upon the review of the *entire* record, I'm going to confirm the tentative." (Italics added.) This record is more than sufficient to show that the trial court performed its duty of reviewing the record and determining whether the board's decision was supported by the weight of the evidence.

DISPOSITION

The judgment is affirmed.

BENKE, Acting P. J.

WE CONCUR:

HALLER, J.

McDONALD, J.